

fw022311

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX
FT. WORTH DIVISION

ORIGINAL

2014 JUL 28 AM 10:09

b5

CLERK OF COURT (W)

ANDREW GONZALEZ
Plaintiff.

v.

STELLAR RECOVERY, INC.
Defendant.

CIVIL ACTION NO.

4 - 14 C V - 581 Y

TRIAL BY JURY DEMANDED

ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiff Andrew Gonzalez, complains of Stellar Recovery, Inc. Defendant, and for cause of action would respectfully show as follows:

NATURE OF ACTION

1. This is an action for damages brought by individual, Plaintiff Andrew Gonzalez against Defendant Stellar Recovery, Inc., for violations of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227(b)(1)(A) and 47 U.S.C. § 227(b)(1)(A)(iii).
2. Plaintiff contends that the Defendant has violated such laws by calling Plaintiffs cellular telephone with recorded messages using an automatic telephone dialing system.

JURISDICTION AND VENUE

3. Jurisdiction of this Court arises under 47 U.S.C. §227(f)(2).
4. This Court has jurisdiction over Defendant pursuant to 28 U.S.C. §1331 because Defendant engages in business within this state, to wit debt collection.
5. Venue is proper pursuant to 28 U.S.C. §1331 and 47 U.S.C. §227(f)(4).

6. Venue in the Northern District of Texas, Fort Worth Division is proper in that the Plaintiff resides in State of Texas, Tarrant County, City of Fort Worth, the Defendant transacts business here, and the conduct complained of occurred here.
7. All conditions precedent to the bringing of this action, have been performed.

PARTIES

8. The Plaintiff in this lawsuit is Andrew Gonzalez, a natural person and a citizen of Tarrant County, Texas.
9. Defendant in this lawsuit is Stellar Recovery, Inc. (herein after "SRI") a debt collection company with principal office at 4500 Salisbury Road, Suite 105, Jacksonville, FL 32216.
10. SRI is registered with the Texas Secretary of State pursuant to Tex. Fin. Code § 392.101 to engage in debt collection activities in Texas.
11. SRI may be served with process by serving its registered agent for service of process: Brant Abraham Reiter McCormick & Johnson, 50 North Laura Street, Suite 2750, Jacksonville, FL 32202.
12. SRI is a "debt collector" as defined by 15 U.S.C. § 1692a(6).
13. SRI is in the business of collecting consumer debts using the mails and telephone and regularly collects, or attempts to collect, consumer debts owed, or alleged to be owed, to another person.

FACTUAL ALLEGATIONS

14. On **June 17, 2014 at 01:32 p.m.**, Defendant SRI called the Plaintiff's wireless cell phone (815) 516-6677 from telephone number (877) 236-5791. (**Exhibit A**)
15. On **June 18, 2014 at 10:18 a.m.**, Defendant SRI called the Plaintiff's wireless cell phone (815) 516-6677 from telephone number (877) 236-5791. (**Exhibit B**)
16. On **June 19, 2014 at 01:56 p.m.**, Defendant SRI called the Plaintiff's wireless cell phone (815) 516-6677 from telephone number (877) 236-5791. (**Exhibit C**)
17. Refer to ¶16, Plaintiff answered the telephone call and was greeted with a recorded message requesting to speak with someone other than Plaintiff.
18. On **June 20, 2014 at 09:27 a.m.**, Defendant SRI called the Plaintiff's wireless cell phone (815) 516-6677 from telephone number (877) 236-5791. (**Exhibit D**)
19. On **June 20, 2014 at 04:00 p.m.**, Defendant SRI called the Plaintiff's wireless cell phone (815) 516-6677 from telephone number (877) 236-5791. (**Exhibit E**)
20. On **June 23, 2014 at 11:33 a.m.**, Defendant SRI called the Plaintiff's wireless cell phone (815) 516-6677 from telephone number (815) 516-1219. (**Exhibit F**)
21. On **June 24, 2014 at 02:25 p.m.**, Defendant SRI called the Plaintiff's wireless cell phone (815) 516-6677 from telephone number (877) 236-5791. (**Exhibit G**)
22. On **June 24, 2014 at 06:47 p.m.**, Defendant SRI called the Plaintiff's wireless cell phone (815) 516-6677 from telephone number (877) 236-5791. (**Exhibit H**)
23. Refer to ¶22, Plaintiff answered the telephone call and was greeted with a recorded message attempting to contact someone other than Plaintiff and stating to contact Stellar Recovery at telephone number (877) 236-5791.

24. On **June 25, 2014 at 11:39 a.m.**, Defendant SRI called the Plaintiff's wireless cell phone (815) 516-6677 from telephone number (815) 516-1219. (**Exhibit I**)
25. On **June 25, 2014 at 03:34 p.m.**, Defendant SRI called the Plaintiff's wireless cell phone (815) 516-6677 from telephone number (815) 516-1219. (**Exhibit J**)
26. Refer to ¶25, Plaintiff answered the telephone call and was greeted with a recorded message stating please hold for a representative.
27. On **June 26, 2014 at 02:13 p.m.**, Defendant SRI called the Plaintiff's wireless cell phone (815) 516-6677 from telephone number (877) 236-5791. (**Exhibit K**)
28. On **June 26, 2014 at 06:57 p.m.**, Defendant SRI called the Plaintiff's wireless cell phone (815) 516-6677 from telephone number (877) 236-5791. (**Exhibit L**)
29. **Refer to Exhibits A through L;** in each telephone communication, Defendant SRI used an automatic telephone dialing system to dial Plaintiff's wireless cellular phone in an attempt contact someone other than Plaintiff.
30. **Refer to Exhibits A through L;** in each telephone communication, Defendant SRI used a telephone dialing system with the **capacity** to automatically dial Plaintiff's wireless cellular phone in an attempt to contact someone other than Plaintiff. (**Emphasis Added**).
31. **Refer to Exhibits A through L;** in each telephone communication, Defendant SRI attempted to contact someone other than Plaintiff were for a non-emergency purpose.
32. At no time has the Plaintiff given his express consent, written or otherwise, to Defendant SRI to call his wireless cell phone number (815) 516-6677.
33. Plaintiff has no prior or present established relationship with Defendant SRI.
34. Plaintiff has no contractual obligation to pay Defendant SRI any alleged consumer debt.

35. On June 26, 2014 Plaintiff sent a letter via United States Postal Service Certified Mail informing Defendant SRI said actions were a violation of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227(b)(1)(A) and 47 U.S.C. § 227(b)(1)(A)(iii). This was in an effort to amicably resolve the matter prior to litigation.
36. All violations complained of herein occurred within the statute of limitations of the applicable federal statutes.

COUNT I

**VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. §227(b)(1)(A) BY DEFENDANT STELLAR RECOVERY, INC.**

37. Paragraphs 1 through 36 are re-alleged as though fully set forth herein.
38. Plaintiff and Defendant SRI do not have an established business relationship within the meaning of 47 U.S.C. §227(a)(2).
39. Defendant SRI called Plaintiff's cellular telephone using an "automatic telephone dialing system" within the meaning of 47 U.S.C. §227(a)(1).
40. In each telephone communication referenced in ¶14 through ¶16, ¶18 through ¶22, ¶24, ¶25, ¶27 and ¶28, Defendant SRI has demonstrated willful or knowing non-compliance with 47 U.S.C. § 227 (b)(1)(A) by using equipment with automatic telephone dialing system or used a telephone dialing system that has the capacity to automatically call the Plaintiff's cellular telephone number (815) 516-6677, which is assigned to a cellular telephone service **with no prior express consent and for no emergency purpose**.
41. 47 U.S.C. §227(b)(1)(A) which states in part;
 - (b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.—
 - (1) PROHIBITIONS.—It shall be **unlawful for any person** within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated the Telephone Consumer Protection Act and/or admission from the Defendant(s) that they violated the Telephone Consumer Protection Act;
- b) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(B); which states in part: an action to recover for actual monetary loss form such a violation, or to receive \$500 in damages for each such violation, whichever is greater.
- c) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(C); which states in part: If the Court finds that the Defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the Court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 (three) times the amount available under subparagraph (B) of this paragraph.
- d) Awarding *such other and further relief as the Court may deem just and proper.*

COUNT II

**VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C.
§227(b)(1)(A)(iii) BY DEFENDANT STELLAR RECOVERY, INC.**

42. Plaintiff alleges and incorporates the information in paragraphs 1 through 41.
43. In each telephone communication referenced in ¶14 through ¶16, ¶18 through ¶22, ¶24, ¶25, ¶27 and ¶28, Defendant SRI has demonstrated willful or knowing non-compliance with 47 U.S.C. §227(b)(1)(A)(iii) by using equipment with automatic telephone dialing system or used a telephone dialing system that has the capacity to automatically call the Plaintiff's cellular telephone number (815) 516-6677, which is assigned to a cellular telephone service.
44. 47 U.S.C. §227(b)(1)(A)(iii) which states in part;

(b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.—

(1) PROHIBITIONS.—It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

- (A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—
(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- e) Adjudging that Defendant violated the Telephone Consumer Protection Act and/or admission from the Defendant(s) that they violated the Telephone Consumer Protection Act;

- f) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(B); which states in part: an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater.
- g) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(C); which states in part: If the Court finds that the Defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the Court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 (three) times the amount available under subparagraph (B) of this paragraph.
- h) Awarding such other and further relief as the Court may deem just and proper.

COUNT III

VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C. §227(b)(1)(A)(iii) BY DEFENDANT STELLAR RECOVERY, INC.

- 45. Plaintiff alleges and incorporates the information in paragraphs 1 through 44.
- 46. In telephone communications referenced in ¶16, ¶22, and ¶25, Defendant SRI has demonstrated willful or knowing non-compliance with 47 U.S.C. §227(b)(1)(A)(iii) by using equipment with automatic telephone dialing system or used a telephone dialing system that has the capacity to automatically call the Plaintiff's cellular telephone number (815) 516-6677, which the Plaintiff was charged for the telephone calls.
- 47. 47 U.S.C. §227(b)(1)(A)(iii) which states in part;
 - (b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.—
 - (1) PROHIBITIONS.—It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—
 - (B) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any

automatic telephone dialing system or an artificial or prerecorded voice—

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

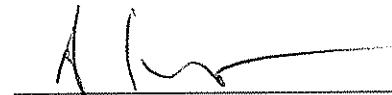
- i) Adjudging that Defendant violated the Telephone Consumer Protection Act and/or admission from the Defendant(s) that they violated the Telephone Consumer Protection Act;
- j) Awarding Plaintiff *statutory damages*, pursuant to 47 U.S.C §227(b)(3)(B); which states in part: an action to recover for actual monetary loss form such a violation, or to receive \$500 in damages for each such violation, whichever is greater.
- k) Awarding Plaintiff *statutory damages*, pursuant to 47 U.S.C §227(b)(3)(C); which states in part: If the Court finds that the Defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the Court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 (three) times the amount available under subparagraph (B) of this paragraph.
- l) Awarding such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

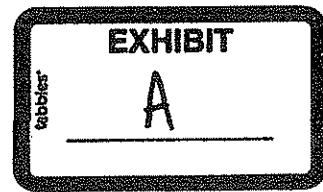
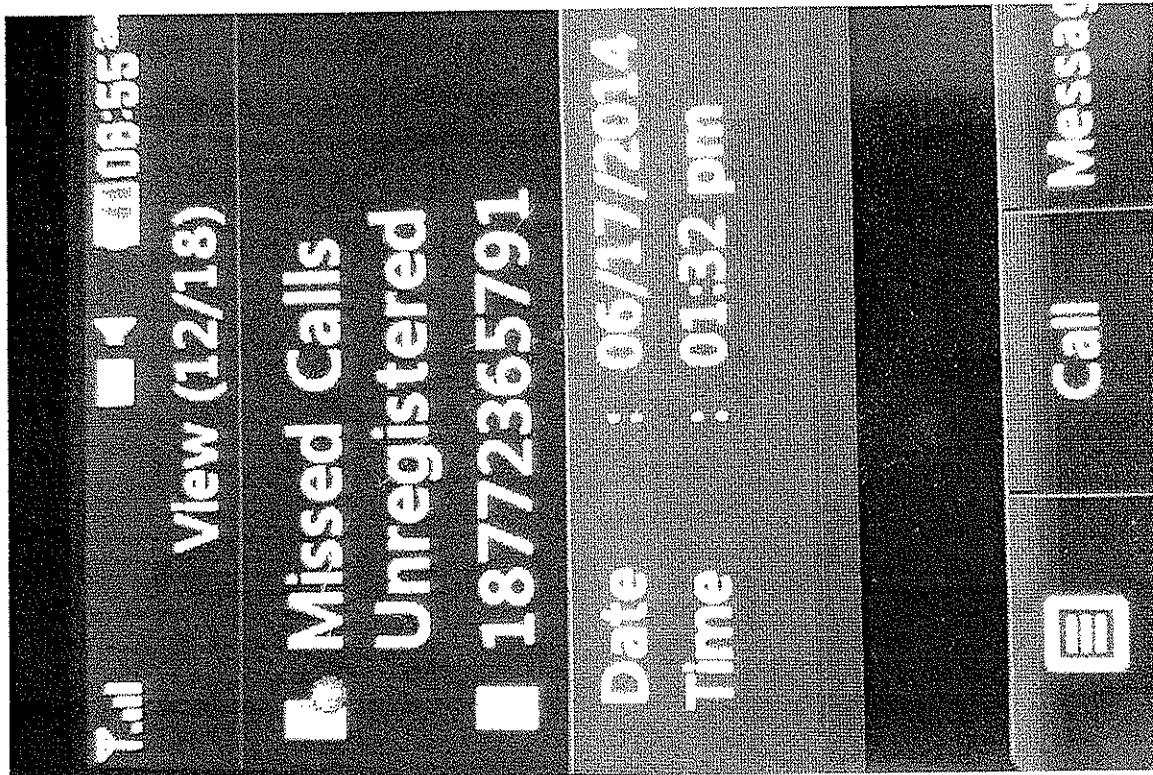
Plaintiff is entitled to and hereby demands trial by jury.

Dated: July 28, 2014

Respectfully Submitted,



Andrew Gonzalez
416 Chatamridge Court
Fort Worth, TX 76052
(817) 975-5655
gonandrew@yahoo.com

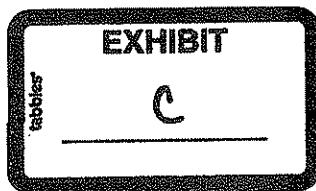


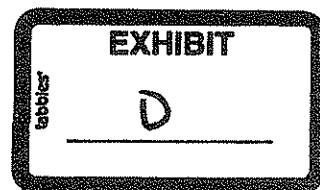


EXHIBIT

B

Call	View (6/18)	Call	View
Received Calls		Call	View
Unregistered			
18772365791			



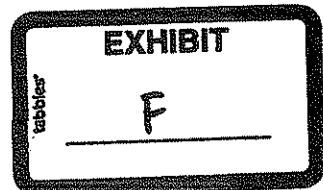


YJ	■ 1 ■ 06257	View (4/18)	■ Missed Calls [ZX] Unregistered ■ 18772365791	Date : 06/20/2014 Time : 04:00 PM	Date : 06/20/2014
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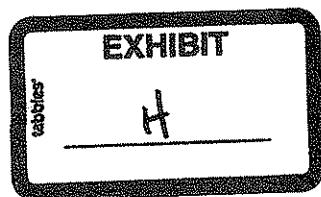
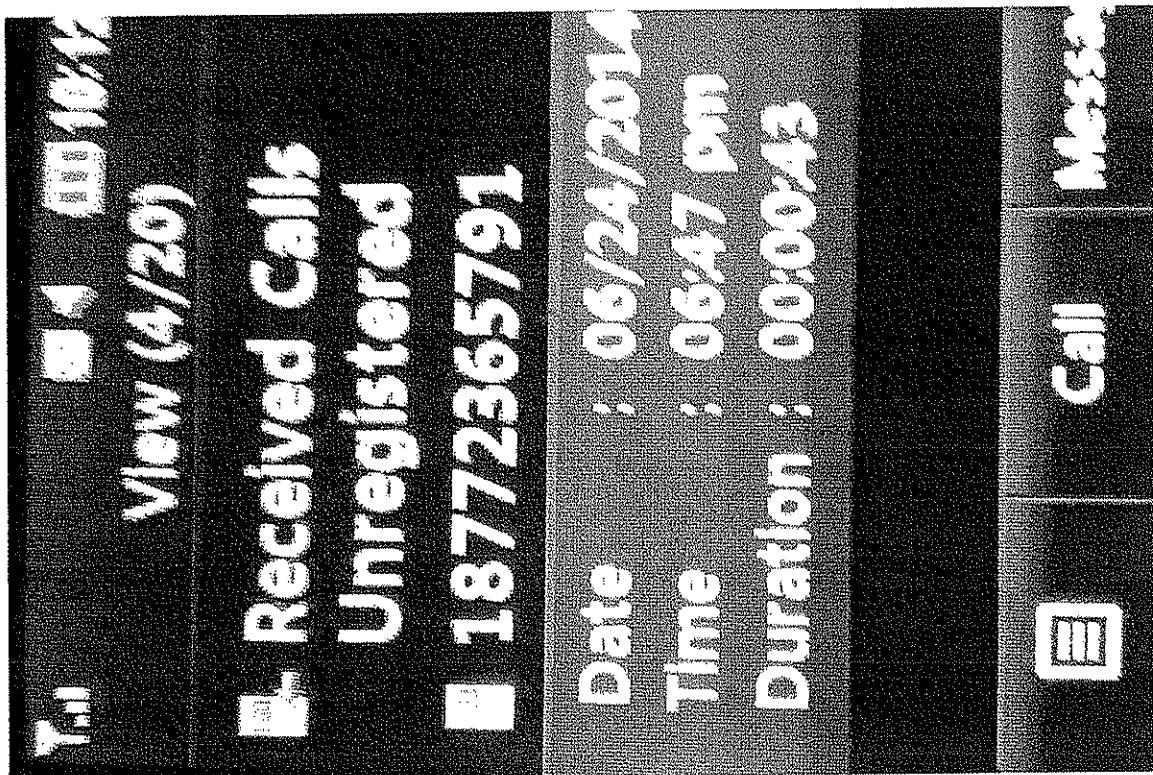
EXHIBIT

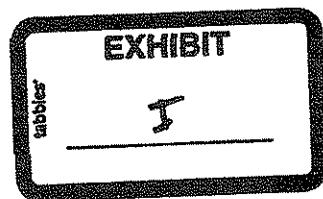
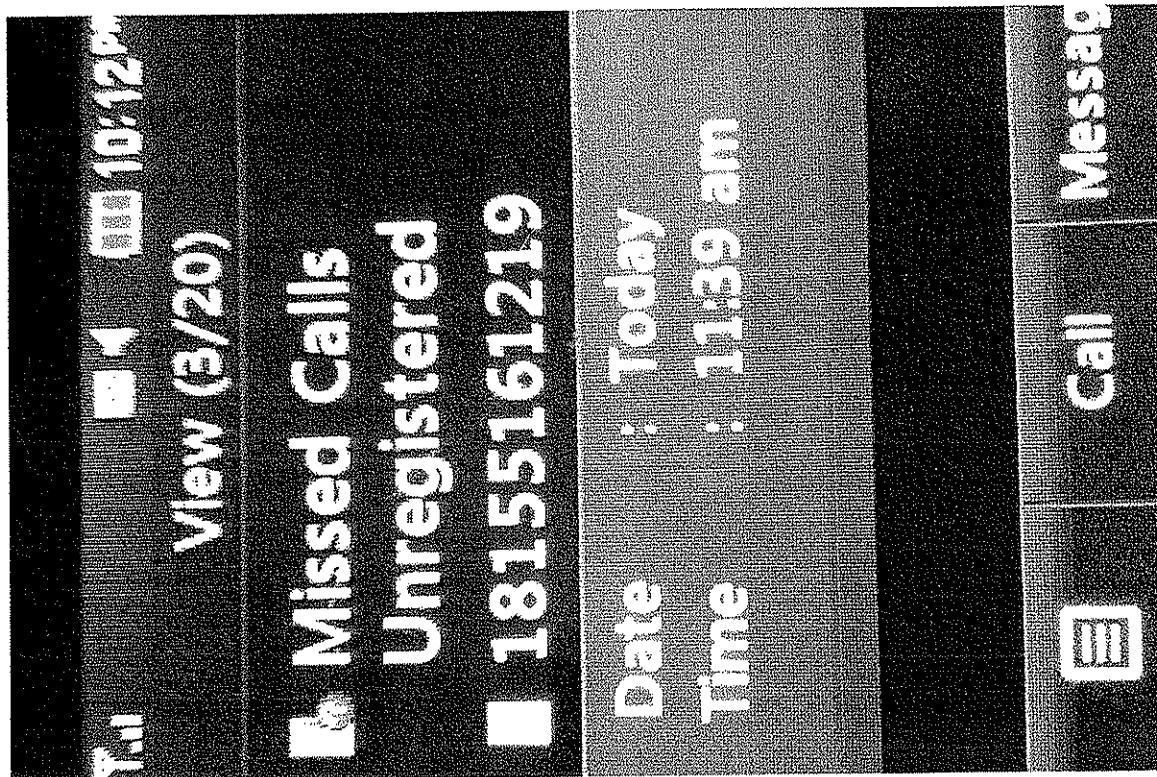
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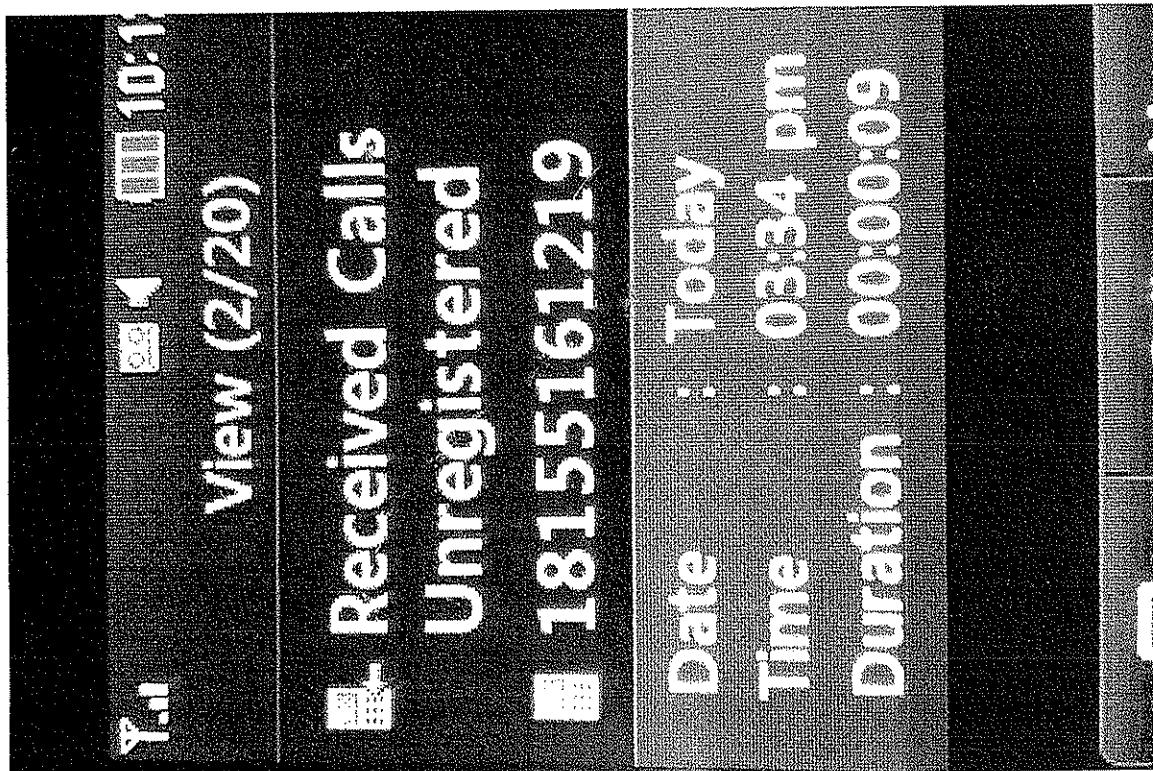
6







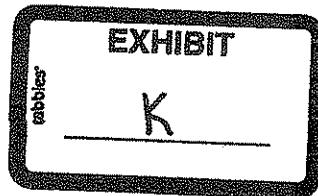
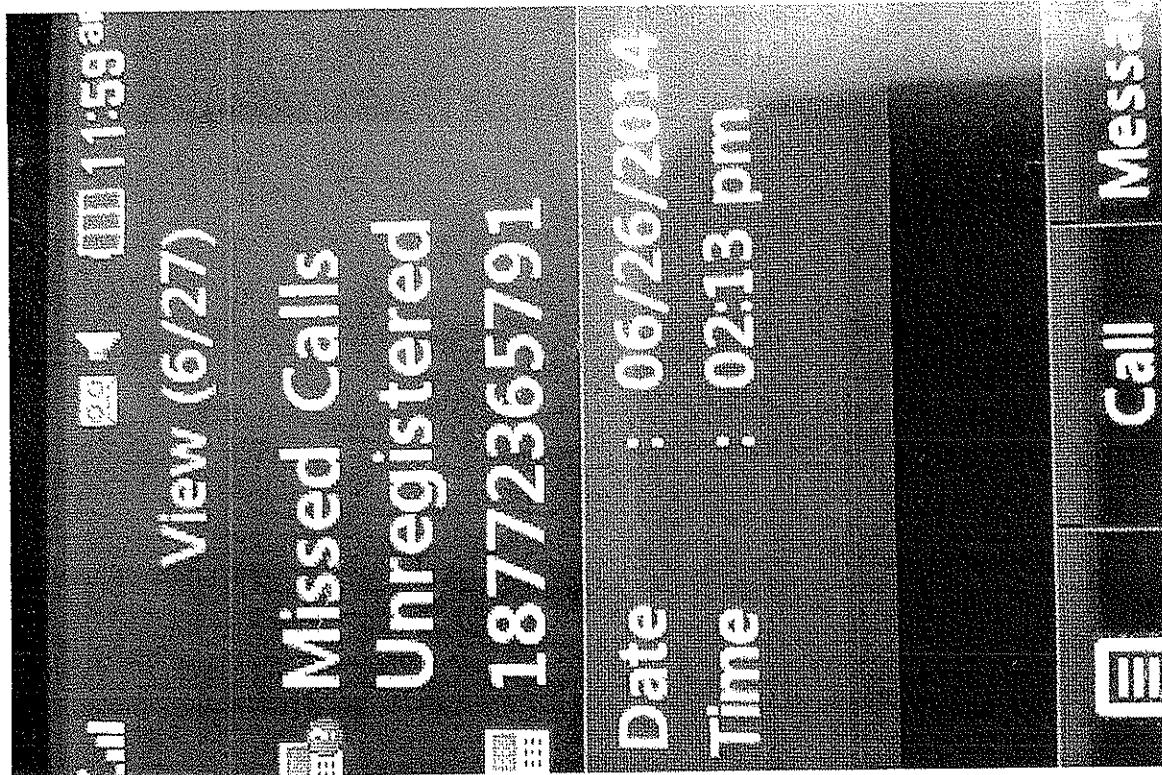


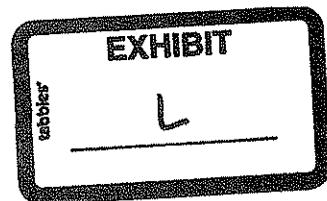
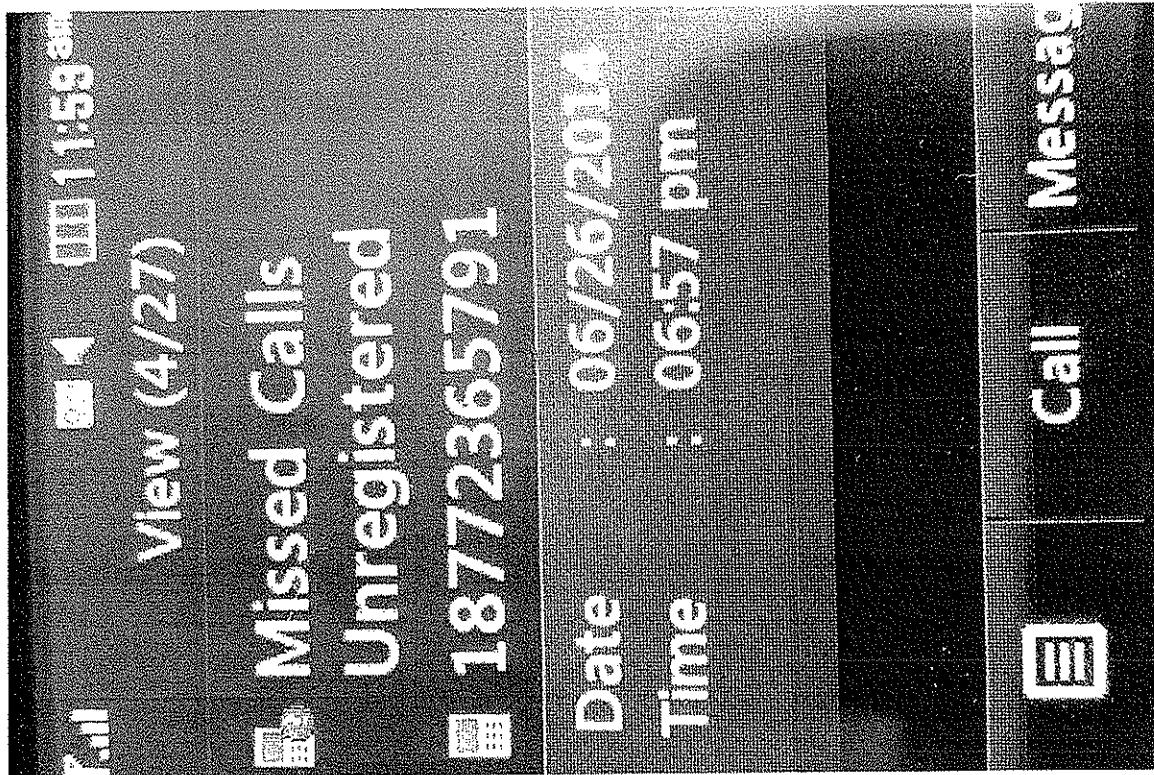


EXHIBIT

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J





CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Andrew Gonzalez

(b) County of Residence of First Listed Plaintiff Tarrant
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
Stellar Recovery, Inc.County of Residence of First Listed Defendant C Duval(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

4 - 14 CV - 581 Y

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|--------------------------------|---------------------------------------|---|--------------------------------|--------------------------------|
| Citizen of This State | <input type="checkbox"/> PTF 1 | <input type="checkbox"/> DEF 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> PTF 4 | <input type="checkbox"/> DEF 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input checked="" type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FEDERAL LAW/PENALTIES	BANKRUPTCY	OTHER STATUTES			
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	LABOR <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395F) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- | | | | | | |
|---|---|--|---|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation |
|---|---|--|---|--|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
47 U.S.C. § 227(b)(1)(A) and 47 U.S.C. § 227(b)(1)(A)(iii)

Brief description of cause:

Violations of the Telephone Consumer Protection Act

VI. CAUSE OF ACTION

<input type="checkbox"/>	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND:
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YES No **VII. RELATED CASE(S) PENDING OR CLOSED:**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

07/28/2014



FOR OFFICE USE ONLY

RECEIPT # FW022311

AMOUNT

400 06

APPLYING IFFP

JUDGE

MAG. JUDGE